



University of Hawaii at Manoa

Environmental Center
Crawford 317 • 2550 Campus Road
Honolulu, Hawaii 96822
Telephone (808) 948-7361

RL:0566

HB 2287-86 DEPARTMENT OF THE ENVIRONMENT

Statement for
House Committees on
Planning, Energy, Ecology and Environmental Protection
and
Public Employment and Government Operations
Public Hearing - February 15, 1986

By
Doak C. Cox, Environmental Center
Jacquelin Miller, Environmental Center
Peter Rappa, Sea Grant
Ray Tabata, Sea Grant

Introduction and Summary

HB 2287 calls for the establishment of a new State Department to be entitled the Department of the Environment (DEnv), for abolition of the Office of Environmental Quality Control (OEQC) and placement of the OEQC powers (with some expansion) in the new department, and for the transfer to the new department of some of the powers of the Department of Agriculture (DAgr) and Department of Health (DOH). This statement on the bill does not reflect an institutional position of the University of Hawaii.

We consider that findings expressed in the bill validly demonstrate weaknesses in the State's environmental programs, weaknesses that would be reduced by the creation of the new department; and that the scope proposed for the new department is rational. There are, however, alternative means by which most of the weaknesses might be reduced as effectively or almost as effectively as the means proposed and that would not be as disruptive. If the new department is to be established there are certain changes in the provisions of the bill related to its structure and to DEnv powers that would be desirable.

General comments

The provisions of the bill, although extensive, are much simpler than its 66-page length might suggest. It is, indeed, so simple that most of its direct effects may be indicated by the following tabulation of its contents:

Sec. of Bill	HRS Chapter amended		Content or effects
	No.	Topic	
1	—	—	Findings
2	26	State organization	Creates a new DEnv and provides for its structure
3	149A	Pesticides	Transfers authority from DAgr to DEnv
4	339	Litter	Transfers authority from DOH to DEnv
5	340A	Solid waste	Transfers authority from DOH to DEnv
6	340B	Wastewater	Transfers authority from DOH to DEnv
7	340E	Drinking water	Transfers authority from DOH to DEnv
8	341	Environmental quality	Abolishes OEQC & places its functions in DEnv
9	342	Pollution control	Transfers authority from DOH to DEnv
10	343	EIS system	Places present OEQC functions in DEnv
11	343D	Environmental disclosures	Places present OEQC functions in DEnv
12	—	—	Transfers of functions & staff in gen.
13	—	—	Transfers of appropriations, etc.
14	—	—	Intent not to jeopardize programs
15	—	—	Reconciliation with other statutes
16	—	—	Editorial explanation
17	—	—	Establishes effective date 7-1-87

This review of the bill may be considered as consisting of two parts, the first of which is intended to assist the Legislature in making the fundamental decision whether or not the DEnv should be established. In this first part we discuss the purposes of establishing the DEnv that are indicated in the findings expressed in the bill, the scope proposed for the DEnv, and alternative ways by which the purposes might be served within the same scope; and we compare the benefits and detriments associated with the various ways without, however, attempting to make the overall evaluations of relative net benefits that the Legislature must make in reaching its decision.

The second part of our review relates to improvements in certain details that we recommend if the bill is to be passed, but that have little to do with the fundamental decision.

Findings

The findings expressed in the bill are, essentially, that:

- 1) "Hawaii's most precious resource lies in the beauty and almost pristine state of its environment;"
- 2) Several weaknesses in the State's environmental protection program have been revealed in recent years, for example by pesticide contamination incidents;
- 3) Hawaii cannot depend on the federal government to protect its environment;
- 4) Continuance of concern with environmental contamination problems may be expected.

Hence that:

- 5) There is need for improvement of State capabilities to detect potential problems and respond to emergencies; and
- 6) There are also needs for "a stronger and more aggressive posture in resolving conflicts between environmental protection and economic development goals," and for greater evidence "that this State is serious about protecting its environment."

And, finally, that:

- 7) "Departmental status for environmental protection programs would fulfill these needs" and the costs of reorganization are justified.

Those of us who have been concerned with the State's environmental problems for many years would seriously question whether the State's environment can still be described as "almost pristine", but we thoroughly agree with the findings relating to weaknesses in State environmental protection programs and to the needs for strengthening them. We would also agree with a finding that reorganization is at least one way of providing the additional strength, and a way that may justify associated detrimental effects.

Proposed treatment of OEQC functions

In referring to the "scope" of the DEnv and of the functions for which it would be responsible, we mean the scope of the environmental aspects with which the functions deal, and not the extent of regulatory or other authority represented in address to those aspects. However, in focusing first on the functions now performed by OEQC, we will comment on changes in authority that are proposed along as well as on the placement of those functions in DEnv.

Our reason for discussing first the OEQC functions is that their scope is broader than the combination of the functions of DOH and DAgr that would be transferred to DEnv. The discussion will in some cases refer actually to the combination of OEQC and the Environmental Council which advises the OEQC and whose functions would be placed, with those of OEQC, in the proposed new department.

These functions are of two major kinds:

- 1) Interdepartmental coordination (HRS 341); and
- 2) Management of the EIS system (HRS 343), and of the system that we have, for the sake of brevity, referred to as the "Environmental disclosure system" although it relates to the disclosure of the interests of entities whose actions may impact on the environment (HRS 343D).

The most significant proposals for changes in authority that we have noted in the bill relate to the first of these functions.

The first of the proposed new sections of HRS 341 would require that the DEnv adopt rules necessary for the purposes of the chapter (p. 34, ls. 3-4). We are not certain what rules may be necessary for the purposes of HRS 341 (as distinct from HRS 343 and 343D); and unless there is some definite concept of such rules we suggest revision of the first of the proposed new sections to authorize rather than require rules, and to refer to the rules as those that may be necessary rather than necessary rules.

The second of the proposed new sections (p. 34, ls. 5-8) would require that state and county agencies cooperate with the DEnv. Under the present statute (HRS 341-4), OEQC's coordinating powers are limited to those explicitly delegated to its director by the Governor. They are, in addition, limited in practice by the present placement of OEQC in the DOH, even though that placement is supposedly for administrative purposes alone. Additional strength to the coordinating function will certainly be provided by the placement of this function in the DEnv and by the second of the proposed new sections of HRS 341.

The third of the proposed new sections (introduced as a replacement for HRS 341-3, pp. 6-42) is a tabulation of the "Powers and duties" of the DEnv. We will later have a few comments on these powers and duties.

In general, in provisions relating to the EIS system, the bill proposes to substitute "department" (DEnv) for the "council" (Environmental Council). Particularly because the DEnv would have enforcement powers whereas the OEQC does not, we believe that certain of the functions involved should continue to be provided explicitly by the Council and that the word "council" should not be altered in p. 50, l. 5; p. 51, l. 21; and p. 52, l. 22.

We have never considered that the functions called for in HRS 3430 could be performed effectively by the OEQC and we do not consider that they can be performed effectively by the DEnv.

Proposed scope of DEnv

The findings presented in the bill and the scope of the proposed reorganization indicate that the environmental aspect of primary concern is that relating to pollution or contamination. Other environmental aspects with which some concern has been expressed in recent years include natural hazards and the conservation of natural and archaeological resources. There has been particular concern with the adequacy of the State's programs for water conservation and for the conservation of native flora and fauna and their habitats.

We recognize that practically all departments of the State are or should be concerned with some aspect of the environment, and that it would be quite impractical to create a department that had comprehensive authority over all environmental matters. The proposed scope of DEnv's attention is very similar to that of the federal EPA, and if a new environmental department is to be established, the scope proposed is as reasonable as any that might be provided, and more reasonable than most possible alternatives. However, we note that the proposed scope would be reflected somewhat better by a title such as "Department of Environmental Quality" than the proposed title—"Department of the Environment." Even the title "Department of Environmental Protection" would suggest inclusion of conservation powers that are now held primarily by the Department of Land and Natural Resources (DLNR) and whose transfer to the new Department is not proposed in the bill.

Background to discussion of alternatives

The alternative ways of meeting the purposes of HB 2187 that we will discuss do not include possible increases in the scope of the DEnv because, as stated above, we think this scope is as reasonable as any that might be provided.

As background for our discussion of alternatives we identify several kinds of present weaknesses in the State's environmental programs, and also certain detriments associated with attempts to reduce these weaknesses by reorganization. We then address each kind of weakness, identify alternative means for reducing that weakness, and discuss the detriments associated with those means.

The weaknesses, we believe, may be classified as relating to:

- 1) planning,
- 2) coordinating authority,
- 3) enforcement authority,
- 4) staff competence,
- 5) agency resources, and
- 6) evaluation of the importance of environmental quality aspects of the quality of life relative to other aspects.

Associated with any means for reducing weaknesses of these kinds that involve reorganization, some detriment in the form of temporary disruption must be anticipated. In HB 2187 there is clear evidence of intent to minimize such disruption of individual on-going programs in the implementation provisions of Sections 12 to 15 and particularly Section 17.

By its nature, however, a reorganization such as is proposed cannot be carried out without the permanent detriment of reductions in some useful inter-program relationships while it achieves the benefit of increases in other useful inter-program relationships. Although we are certain that there are many examples of reductions in useful inter-program relationships that would result from the proposed reorganization, we provide only a few examples.

By this bill, responsibility for pollution control would be transferred from DOH to the DEnv. One of the important reasons for the control of pollution, perhaps the most important, is the threat of such pollution to human health. The potential for close coordination between pollution control programs and other programs relating to human health is clearly greater within the DOH than it would be between the DOH and the DEnv. Hence a reduction in the effectiveness of relationships between the pollution control programs must be anticipated.

By this bill, responsibility for environmental epidemiological research would be placed in the DEnv. There are certainly many similarities between research on environmental aspects of epidemiology and research on the other aspects of epidemiology for which the DOH would retain responsibility, and we suspect indeed that some individual epidemiologists in the DOH are now concerned with all aspects.

By the bill, regulatory authority over the use of pesticides would be transferred to the DEnv from the DAgr. In this case the benefit of a closer relationship between control of the environmental consequences of pesticides by the regulation of their use would be achieved at the expense of a more remote relationship between the regulation of use for the sake of environmental improvement and the regulation of use for agricultural purposes.

Alternative means for the reduction of present limitations

Improvements in planning for environmental management would result from the inclusion of such planning in the powers and duties of the DEnv as proposed in the amendment of HRS 341-3. They could also be provided, we think with equal effect and without the disruption of reorganization, by placement of the same powers and duties in the OEQC.

A specific need for improvement in coordination is indicated by the reference in the findings to pesticide problems. There is no question that substantial improvement in this respect would result from the combination, in the proposed DEnv, of the pesticide regulatory powers now held by DAgr and the pollution control powers now held by DOH, but at the expense of the disruptive effect to which we drew attention earlier. It could be met equally well by transferring the pesticide regulatory powers from DAgr to DOH, but at the expense of separating concerns with pesticide contamination from the concern with the benefits of pesticide usage that the DAgr must retain. In addition, it could be met, perhaps as effectively and without disruptive effect, by providing the additional strength to OEQC's coordinating powers that is proposed in the bill without transferring those powers to DEnv. Improvements by the later means would, of course, not be restricted to the avoidance or reduction of pesticide problems.

The bill does not propose any change in enforcement authority or in the staff or resources available to agencies for the exercise of the authority. Improvements in these respects would require increases in enforcement authority, improvement in staff competence, and increases in the appropriations of the enforcement agency or agencies. Such improvements would be no more effective with the proposed transfer of enforcement powers than without the transfers, and disruptive effects would be avoided if the transfers were not made.

The bill does not address weaknesses in the overall evaluation by the State government of the relative importance of the environmental aspects of the quality of life. Noting that there is already a statement of Environmental Policy in the form of HRS 344, we believe that there is little more the legislature can do to provide improvement in this respect.

Recognizing that no single piece of legislation can be expected to remedy all of the weaknesses, we would summarize our conclusions regarding alternative means for their reduction as follows:

- a) There are alternative means for improvements in planning and in coordinating authority that would be as effective or almost as effective as those proposed, and that would be less disruptive than the proposed reorganization.
- b) The bill does not seem intended to provide improvements in enforcement authority, staff competence, or agency resources, and such improvements would have to be provided by other means.
- c) Substantial improvement in overall evaluation of the importance of environmental quality cannot be accomplished through legislation.

Proposed DEnv structure

Section 2 of HB 2287 would provide that the DEnv include three divisions, with specific program responsibilities, four offices with staff functions reporting directly to the Director, the Environmental Council, and additional advisory committees. There are some mismatches between the categories, proposed titles and proposed program assignments of two of the divisions. For example, programs that would be assigned to a "groundwater division" include those that deal with the quality of surfacewater as well as groundwater; with drinking water some of which is drawn from surfacewater; and with wastewater treatment facilities whose effluents affect both surfacewater and groundwater. Programs dealing with solid waste would be assigned to an "air pollution and hazardous waste division" although one of the principal concerns in solid waste disposal is with impacts on water quality. The functions proposed for the "groundwater" division (which would be better titled "water quality division") and the "air pollution and hazardous material division" are essentially line functions. Those of the proposed third division, a "laboratory division" are essentially service functions to the first two divisions, as would be functions of the "offices" such as "administration," "personnel," and data management.

If the DEnv is to be established, we suggest that its organization be presented in much less detail in HB 2287, leaving additional detail, to the extent it is found necessary, to be provided by amendment in 1987 before the proposed effective date of DEnv establishment.

Proposed DEnv powers and duties

The powers and duties proposed for the DEnv by amendment of HRS 341-2 (pp. 36 to 42 of the bill) are in general appropriate. However, there are among them some inappropriate provisions and duplications. We call attention here to only a few examples:

That numbered (8) relates to the "prevention" of and that numbered (4) to the "prevention and abatement" of pollution. Both give examples of pollutants, but the list in neither case is complete and there are overlaps between them. Furthermore, total "prevention" in the case of most kinds of pollution is impractical and in the case of many kinds would be quite undesirable.

That numbered (6) relates to a groundwater quality monitoring network designed to detect or predict groundwater contamination, although prediction cannot result from monitoring as distinct from the analysis of the results of monitoring. There is no equivalent to number (6) relating to surfacewater quality monitoring, although that numbered (14) relates to monitoring the environment.

A tabulation of powers and duties that is entirely appropriate in scope, completely accurate, and rationally organized, cannot now be expected, but at least the obvious problems with the present tabulation should be rectified.

Environmental Center

HRS 341 contains statutory provisions relating to the establishment of the Environmental Center at the University, its scope, and its structure. These provisions would be rearranged but not changed in substance by HB 2287.